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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,796	03/07/2002	Jonathan D. Smith	RBC-101US	3409
24314	7590	03/29/2005	EXAMINER	
JANSSON, SHUPE & MUNGER, LTD 245 MAIN STREET RACINE, WI 53403			HAYES, BRET C	
			ART UNIT	PAPER NUMBER

3644

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/092,796

Applicant(s)

SMITH, JONATHAN D.

Examiner

Bret C Hayes

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 2 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the argumetns are not persuasive -- see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.



TERI PHAM LUU  
SUPERVISORY

PRIMARY EXAMINER

## ADVISORY ACTION

### *Response to Arguments*

1. Applicant's arguments filed 07 MAR 05 have been fully considered but they are not persuasive.
2. In response to the Applicant's argument that the Stang reference is rife with inconsistencies and impossible mathematics, while examiner believes this to be true, the origin of the difficulties cannot be determined and the reference is open to interpretation. In opposition to Applicant's argument, one could just as reasonably argue that no error in calculation was made, but rather an error in data recording. Presuming that the Yield ( $\text{g}/81\text{cm}^2$ ) column from Table 1 is correct—that is, that Stang weighed and recorded the appropriate weight—one could also reasonably presume that Stang correctly counted and recorded the appropriate number of berries, which, after dividing into the Yield of 17.7, Stang then correctly arrived at 0.47g as the Mean Fruit Weight. Thereafter, Stang erred in recording the actual number of berries and their respective weights. Barring an abnormal distribution of data, which is unlikely given that all biological variables or phenomena are normally distributed, one of ordinary skill in the art could interpret the data to mean that half the berries weighed less than 0.47g and half weighed more. This would then anticipate or obviate the claimed invention as Stang discloses: claim 1, a method for growing miniature cranberries, the method comprising applying to cranberry plants a plant-growth-regulating composition during the bloom period in an amount such that most of the cranberries have a mature mass of less than 0.6 grams; claim 56, a yield of miniature cranberries grown from a cranberry plant according to a method in which a plant-growth-regulating composition is applied to the cranberry plant during the bloom period in an amount such that

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most of the cranberries have mature masses of less than 0.6 grams; and, in view of paragraph 6, of the office action mailed 04 NOV 04, claims 71 and 72 regarding fruit set of at least about 80% and mature mass of less than 0.6 grams.

***Conclusion***

3. After meeting with MR. Terry Melius and Mr. Jeffrey Gellner, it was determined that the claims as amended ***DO NOT*** put the application in condition for allowance. The arguments, having been considered, do not further the prosecution of the application as indicated above. Therefore, the finality of the previous office actions stands.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. Due to a relocation, after April 4, 2005, that telephone number will become disconnected and a new telephone number will be in effect (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421 (after April 4, 2005 (571)272 – 7045). The fax number is (703) 872 – 9306.

bh

3/20/05